

DHMH POLICY

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DEPUTY SECRETARY FOR OPERATIONS -

Office of Capital Planning, Budgeting, & Engineering Services (OCPBES)

DHMH POLICY 02.07.03

Effective Date: March 10, 2014

REAL PROPERTY PERMISSIVE USE POLICY

I. INTRODUCTION

Department Facilities receive requests to use Facility Premises and Space from time to time. While this can be beneficial to the State, DHMH or the Department Facility, and the intended user, such access and use carries a potential risk of personal injury or damage to property. In order to assist Department Facility Directors in protecting the State from liabilities that may arise from use of DHMH facilities this Real Property Permissive Use policy has been developed.

II. PURPOSE

This policy governs the permissive use of real property of the State to the use of Department of Health and Mental Hygiene (DHMH). Appropriate use of a Right-of-Entry Agreement or a Limited Licensee's Release, Waiver, and Hold Harmless Agreement will provide reasonable protection for DHMH, its facilities and the State in the event of a personnel injury or damage to property that may arise from access and use of the Premises of a Department Facility by others. This policy establishes procedures for DHMH Facilities to:

- Evaluate requests for permissive use of the Facility's real property.
- Facilitate the authorization of temporary, limited and conditional use of Department Facility Premises.
- Facilitate the authorization for one-time or one-day events on Department Facility Premises.
- Identify those permissible uses that do not require the use of a Right-of-Entry Agreement and a Limited Licensee's Release, Waiver, and Hold Harmless Agreement.

III. STATUTORY AUTHORITY

Under the Health General Article, §2-102(b)(2), Annotated Code of Maryland, the Secretary is responsible for operation of the Department and shall establish guidelines and procedures to promote the orderly and efficient administration of the Department. Granting permissive use of real property under the management and operations of DHMH Facilities is therefore subject to procedures set out in this policy. Further, under the same statutory authority the Secretary of the Maryland Department of Health and Mental Hygiene has issued

Department of Health & Mental Hygiene

Office of Regulation and Policy Coordination

201 West Preston Street - Room 512 – Baltimore Maryland 21201-2301

Phone 410 767-6499 FAX 410 767-6483

a Limited Delegation of the Secretary's Authority to enter into Right-of-Entry Agreements to Facility Directors (Part VIII - Exhibit 1).

IV. EXECUTIVE SUMMARY

Permissive uses of real property assets owned by the State of Maryland to the use of the Department of Health and Mental Hygiene (DHHM) must follow statutory authority, regulations and policies. This policy sets forth procedures for granting permissive use of real property under the control and operation of DHHM.

A. **Applicable Permissive Use Transactions.** The following permissive use transactions are governed by this policy.

1. Use of Department Facility Premises for an exclusive purpose(s) for temporary, limited and conditional use, including allowing access, bringing personnel and equipment onto the property, or doing work upon or at the facility, by an outside entity ("Grantee").
2. Use of Department Facility Premises for an exclusive purpose(s) for a one time or one day event by a Grantee or an individual.

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B. **Non-application of Permissive Use Transactions.** There are also circumstances in which permissive use transactions do **not** apply:

1. Union Activities that are governed under the Memorandum of Understanding Agreement between the State of Maryland, Department of Budget Management and the American Federation of State, County and Municipal Employees (February 14, 2011).
2. General Public Access for purposes consistent with Facility-related business activities and/or activities intended to accomplish the Facility's mission.
3. General meetings, desk top exercises or similar activity for governmental and non-governmental individuals (i.e., very low probability of personal injury or property damage).

V. DEFINITIONS

1. "Department" means the Department of Health and Mental Hygiene.
2. "Department Facility (Facility)" means any facility owned and/or operated by the Department, including but not limited to:
 - (a) Clifton T. Perkins Hospital Center
 - (b) Crownsville Hospital Center
 - (c) Springfield Hospital Center
 - (d) Spring Grove Hospital Center

- (e) Finan Center
 - (f) Eastern Shore Hospital Center
 - (g) Southern Maryland RICA
 - (h) John L. Gildner RICA
 - (i) Baltimore RICA
 - (j) Western Maryland Hospital Center
 - (k) Deer's Head Center
 - (l) Holly Center
 - (m) Potomac Center
 - (n) Secure Evaluation Therapeutic Treatment Center
 - (o) Rosewood Center
 - (p) Office of the Chief Medical Examiner
2. "Facility Director" means the Superintendent, Director, Chief Executive Officer, or other officer or employee responsible for the operation of a Department Facility.
 3. "Federal Agency" means a recognized federal agency, department or office.
 4. Grantee.
 - (a) "Grantee" means a Federal Agency, Local Jurisdiction, State Agency or a Private Organization that is granted access and use of Space.
 - (b) "Grantee" includes Officers, agents, employees, volunteers, contractors, subcontractors, suppliers, clients, invitees, licensees, successors, and assigns of a Grantee.
 5. "Limited Licensee's Release, Waiver, and Hold Harmless Agreement (Limited Licensee Agreement)" means the DHHM agreement granting a limited license to a non-governmental individual for conditional permission to participate in an event on the Premises of a DHHM facility.
 6. "Local Jurisdiction" means any Maryland County, Municipal Corporation, or other subdivision.
 7. "Permissive Use" means using space on an authorized, lawful and temporary basis that does not convey a leasehold or other legal interest in the property.
 8. "Premises" means the buildings or other improvements or the grounds of a Department Facility.
 9. "Private Organization" means an organization that is incorporated and doing business in Maryland and has a principal office in Maryland.
 10. "Right of Entry (ROE)" means a permissive right to enter upon and use real property owned by the State of Maryland to the use of the DHHM, for a temporary and conditional use.
 11. "Right of Entry (ROE) Agreement" means an agreement entered into by DHHM (Grantor) and another Party or Parties (Grantee) for the exclusive purpose(s) of

temporarily and conditionally accessing bringing personnel and equipment onto, work upon or at, or use specified space on the premises of a DHHM facility.

12. "Secretary" means the Secretary of the Maryland Department of Health and Mental Hygiene.
13. "Space" means the specified portion of the grounds and premises of a Department Facility that is subject to a ROE.
14. "State Agency" means a recognized State of Maryland agency, department, or office other than the Department of Health and Mental Hygiene.

VI. GENERAL PROVISIONS

A. A Right-of-Entry Agreement is to be used when:

1. Use of the Premises is temporary and continuous for less than 1 year or is of an intermittent, periodic nature over a limited period of time; and
2. Requesting Party is a Private Organization, a State Agency, a Local Jurisdiction, or a Federal Agency; and
3. Uses or actions have a low to moderate risk of harm or damage to property or person;

B. Limited Licensee's Release, Waiver, and Hold Harmless (LLRWHH) Agreement is to be used when:

1. A non-governmental individual participating in a ROE Grantee activity that involves physical activity with inherent risk of injury or damage to a person or property; or
2. Non-governmental individuals participating in a one-day or one-time event or activity that is not associated with a Right-of-Entry Agreement and involves physical activity with inherent risk of injury or person or property.

C. Exemption - Union activities governed by the Memorandum of Understanding Agreement between the State of Maryland, Department of Budget and Management, and the American Federation of State, County and Municipal Employees (February 14, 2011) are exempt from the provisions of this policy.

D. Exemption - General Public Access is exempt from this policy when:

1. An individual is accessing a Department Facility during business hours for reasons consistent with the purpose of facility-related business (e.g.,

personnel of a courier, parcel or postal service re: delivery of a package); or

2. An individual partakes of amenities offered by the Department Facility the purpose of which is to further the Facility's general mission. This may include by way of example, access to an outside walking garden for patients; or
3. An invitee of the Facility to conduct facility-related business or facility-related activities necessary to accomplish the Facility's mission (e.g., attending facility business meeting or event).

VII. PROCEDURES

A. RIGHT- OF- ENTRY AGREEMENT

1. Facility Director must email information regarding a request for an intended use to OCPBES at least 10 business days before the proposed use date. The request must include:
 - Name of the Organization
 - Address of the Organization
 - Brief description of intended use and approximate frequency of use
 - Size and description of population to be using space
 - Location of space
 - Factors considered by the facility in evaluating the request for permissive uses; and
 - Facility's rationale for granting the proposed use.
2. OCPBES reviews and recommends approval/disapproval of proposed use to the Chief of Staff for Facilities Operations. Final approval/disapproval is emailed to the Facility Director.
3. If approved, the Facility Director completes an online Right-of-Entry Agreement form, including all required Exhibits (i.e., Representation of Premises and routes of ingress and egress, reimbursement for utilities if applicable, approved schedule for use of the premises, certificates of insurance).
4. Facility Director signs ROE as Secretary's designee (Exhibit 1)
5. Facility Director must require the ROE Grantee to have all non-governmental participants other than Grantee officers, agents, or employees, sign a Limited Licensee's Release, Waiver, and Hold Harmless Agreement.
6. All completed and signed forms must be emailed as a PDF packet to the OCPBES. Facility Director must retain all original documents.

B. Limited Licensee's Release, Waiver and Hold Harmless Agreement

1. Facility Director shall require any non-governmental individual attending or participating in a one- day or one- time activity or event, not associated with a Right of Entry Agreement, that involves physical activity with inherent risk of injury or damage to a person or property, sign a Limited Licensee's Release, Waiver, and Hold Harmless Agreement. The Facility Director must also sign the LLRWHH Agreement.
2. Facility Director must retain all original LLRWHH Agreements.

C. A **Limited Licensee's Release, Waiver and Hold Harmless Agreement** is **NOT** required if there is no physical activity with an inherent risk of injury or damage to a person or property (i.e., meetings, desk top activities),

VIII. EXHIBIT 1

**LIMITED DELEGATION OF THE SECRETARY'S
RIGHT- OF- ENTRY AUTHORITY**

**TO: All DHMH Facility Chief Executive Officers, Operating Officers and Directors
DESIGNEES of the Secretary of Health and Mental Hygiene**

DATE:

RE: Limited delegation to the Secretary's Designees of authority to approve, sign and execute of Right- of- Entry Agreement and Limited Licensee's Release, Waiver, and Hold Harmless Agreement documents under certain conditions to permit temporary, limited, and conditional access to DHMH properties.

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**WHEREAS**, I, \_\_\_\_\_, the Maryland Secretary of Health and Mental Hygiene (hereinafter "the Secretary"), and my successors and assigns, are vested under the laws and regulations of the State of Maryland with certain approval powers for the purpose of permitting Federal, State, local, or private organizations and individuals permissive access to DHMH properties for various purposes under certain conditions; and

**WHEREAS**, The State of Maryland to the use of the Maryland Department of Health and Mental Hygiene owns certain real property and any buildings, grounds, and improvements thereon;

**WHEREAS**, the Secretary or his authorized designees may execute a Right-of-Entry Agreement to temporarily and conditionally authorize federal, state, local and private entities doing business in Maryland to access, enter, bring personnel or equipment onto, work upon or at, use, remain on, and exit portions of real property owned by the State of Maryland to the use of DHMH;

**WHEREAS**, the Secretary's authorized designees may approve a Limited Licensee's Release, Waiver, and Hold Harmless Agreement with non-governmental individuals who intend to attend and/or participate in an approved activity or event at a specific location;

**WHEREAS**, the Secretary or his authorized designee shall execute and enforce the standard Right-of-Entry Agreement (see attached template) and a Limited Licensee's Release, Waiver, and Hold Harmless Agreement (see attached template) as appropriate for entities requesting access and entry onto DHMH properties for purpose conducting temporary business;

**NOW THEREFORE**, I hereby delegate to each of you and your successors, as my designees and subject to certain conditions set forth herein below, the authority, subject to the requirements of applicable DHMH policy, execute and enforce Right-of-Entry Agreements and Limited Licensee's Release, Waiver, and Hold Harmless Agreements by the powers as may be vested in the Secretary under Health-General Article, §2-102(b)(2), Annotated Code of Maryland, and other pertinent regulations and laws of the State of Maryland.

**FURTHERMORE**, the aforesaid delegation of authority shall become effective immediately. The Secretary may revoke the aforesaid delegation, in whole or in part, at any time.

THIS DELEGATION of authority is made under my hand and seal on this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

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Secretary of Health and Mental Hygiene

DRM:drm\Lgl-Frms\Sec-Desg.Ltr

## IX. REFERENCES

- DHHM Policy 02.07.01, Excess Property Policy  
<http://www.dhhm.maryland.gov/docs/02.07.01.pdf>
- Health General Article, §2-102(b)(2), Annotated Code of Maryland  
<http://mgaleg.maryland.gov/webmgaleg/frnStatutesText.aspx?article=ghg&section=2-102&ext=html&session=2013RS&tab=subject5>

## APPROVED:



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Joshua M. Sharfstein, M.D.  
Secretary, DHHM

**March 10, 2014**  
**Effective Date**